IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, NAGPUR BENCH, NAGPUR

Criminal Application No. 1824/2006 in
CRIMINAL APPEAL NO.295 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders and Registrar's orders	:	Court's or Judge's Orders

Mr. D.S. Dharaskar, Advocate for the Applicants.
Mr. D.B. Patel, APP for Respondent/State

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Coram : K. J. Rohee & C. L. Pangarkar, JJ

Dated : 13th September, 2006

Heard.

1. This is an application for bail. The learned counsel for the applicants/accused states that he presses the application of applicant no.2 Umesh alone.

2. The applicants/accused have been held guilty of the offence punishable under Section 302 of I. P.C.

3. The learned counsel for the applicants/accused submits that the mother of applicant no.2 Umesh is seriously ill and she needs to be taken care of as she is quite old. It was contended that she has heart trouble also and, therefore, applicant no.2 may be released on

bail.

4. It was contended on behalf of the applicants/accused that applicant no.2 did not share the common intention inasmuch as he had only caught hold of the deceased at the time of the stabbing. He , therefore, submitted that as is held in the case reported in **AIR 1983 Supreme Court 680 (Rana Pratap .vs. State of Haryana)**, this Court should also come to the conclusion that applicant no.2 Umesh did not share the common intention and as such there should not be any difficulty in releasing him on bail. In the case cited supra, what had happened is that the two accused persons had caught hold of the deceased and one person i.e. Rana Pratap had stabbed the deceased. Their Lordships have held that simply because two persons had caught hold of the deceased, it cannot be said that they shared the common intention with Rana Pratap and as such found that their conviction with help of Section 34 was not proper. Another ruling reported in **AIR 1992 Supreme Court 125 (Harbans Nonia .vs. State of Bihar)** was placed before this Court. The facts in that case are also akin.

5. The learned A. P. P., however, contended that on facts those two rulings have no bearing on the case in hand. He submitted that those two rulings could not

be made applicable for two reasons, firstly they differ on facts and secondly the Court must take into consideration the number of stab wounds that were dealt to the deceased in this particular case. In this case, the accused had caused as many as 5 stab wounds to the deceased. They were on abdomen, chin, nose and chest. From the facts of the case reported in AIR 1983 SC 680, it is not clear as to how many injuries were caused to the deceased in that particular case. In this particular case, there are as many as 6 stab wounds to the deceased. In any case, therefore, it could not be said that applicant no.2 who had caught hold of the deceased at the time of assault did not know that the deceased is going to be done to death.

6. In this case it appears that both the accused had come to the place of the incident duly prepared, inasmuch as applicant no.2 had brought with him chilly powder before assault. It was applicant no.2 who threw chilly powder on the face of the deceased and it is only thereafter that the deceased was attacked by applicant no.1 and applicant no.2 then caught hold of the deceased. The fact that the deceased had thrown chilly powder on the face of the deceased before the attack clearly goes to show that there was a premeditated plan to do away with the deceased. In the circumstances,

prima facie, it cannot be held that applicant no.2 did not share the common intention with applicant no.1. The facts of the present case are different in the sense that the chilly powder was thrown on the face of the deceased and then he was attacked. The chilly powder was thrown by applicant no.2 as already pointed out and as such the rulings cited above by the learned counsel for the applicants/accused have no bearing on the case in hand. There is an overwhelming evidence of eye witnesses. Since the attack was premeditated , applicant no.2 Umesh does not deserve to be released on bail. It is not disputed that applicant no.2 is married. His wife can take care of the mother of the applicants. The application stands rejected with regard to applicant no.2. Since it was not pressed with regard to applicant no.1, the application as a whole is rejected.

JUDGE **JUDGE**

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